

PUBLIC PROSECUTOR

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v.

WILSON J. DAVID

SUPREME COURT, KUALA LUMPUR

SALLEH ABAS LP

HASHIM YEOP SANI SCJ

WAN HAMZAH SCJ

[CRIMINAL REFERENCE NO. 6 OF 1987]

9 JANUARY 1988

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CRIMINAL LAW AND PROCEDURE: *Corruption - Section 4(c) Prevention of Corruption Act 1961 - Knowingly using with intent to deceive principal, any receipt, account or other document which contains false particulars - "Document" used was time sheet record (Kertas Waktu Kerja Kakitangan Gaji Bulan) - Time sheet shows working hours and allowance of worker of Keretapi Tanah Melayu - Reference by Public Prosecutor - Question of law of public interest - Section 66(1) Courts of Judicature Act 1964 - Whether time sheet is a "document" within the meaning assigned to it under s. 4(c) Prevention of Corruption Act.*

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This was a reference by the Public Prosecutor for determination by the Supreme Court under s. 66(1) of the Courts of Judicature Act 1964 the following question

Whether a time sheet namely Kertas Waktu Kerja Kakitangan Gaji Bulan (Baharu) used in the circumstances described in the Judgment in Wilayah Persekutuan Criminal Appeal No. 52-35-1986 is a 'document' within the meaning assigned to it under s. 4(c) of the Prevention of Corruption Act 1961.

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Held:

[1] In the instant case the facts clearly showed that the time sheet (Kertas Waktu Kerja Kakitangan Gaji Bulan) was clearly used as basis for the respondent's claim to monetary benefits to which he was not entitled. It cannot be correct to say that the time sheet was meant only for internal use of the department.

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[2] Accordingly the question was answered in the affirmative.

[Answered in affirmative. No other orders.]

Cases referred to:

Brian Gordon Tweedie [1984] 79 Cr App Rep 168

Sage v. Eicholz [1919] 2 KB 171

Nadimuthu v. PP [1974] 1 MLJ 20

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Legislation referred to:

Courts of Judicature Act 1964, s. 66(1).

Prevention of Corruption Act 1961, s. 4(c)

For the applicant - Mohd. Noor bin Hj. Abdullah, DPP (Jalaldin bin Hussain, DPP, with him)

For the respondent - G. Sri Ram (S. Kanawagi with him); M/s. Sri Ram, Zulkifly & Kumar

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a**JUDGMENT****Hashim Yeop Sani SCJ:**

This was a reference by the Public Prosecutor under s. 66(1) of the Courts of Judicature Act 1964 with the question as follows:

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Whether a time sheet namely Kertas Waktu Kerja Kakitangan Gaji Bulan (Baharu) used in the circumstances described in the Judgment in Wilayah Persekutuan Criminal Appeal No. 52-35-1986 is a 'document' within the meaning assigned to it under s. 4(c) of the Prevention of Corruption Act 1961.

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The respondent was originally charged under s. 4(c) of the Prevention of Corruption Act 1961 and was convicted and fined RM1,000 in default six months' imprisonment by the Sessions Court. The respondent appealed to the High Court. On 9 March 1987 the learned appellate Judge reversed the decision of the Sessions Court and acquitted and discharged the respondent. In the petition of appeal there were not less than 19 grounds of appeal. One of the points considered by the learned appellate Judge was the question of the proper interpretation of the words "other document" appearing in s. 4(c) of the Prevention of Corruption Act 1961.

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The facts relied on by the prosecution were that the respondent knowingly used with intent to deceive Keretapi Tanah Melayu a document known as the Kertas Waktu Kerja Kakitangan Gaji Bulan (Exhibit P3) in respect of which Keretapi Tanah Melayu was interested and which document contained statements which were false in material particulars in that the respondent claimed allowance for working in Kuala Lumpur during a certain period whereas in actual fact he was attending a military training course elsewhere during the same period for which he was already paid. P3 was in fact the time sheet record of the working hours and allowance of a worker. This document was normally prepared by the salaries section of the Keretapi Tanah Melayu but in the instant case it was prepared by the respondent himself.

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Section 4(c) of the Prevention of Corruption Act 1961 reads:

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If...(c) any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal,

he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding five years or to both.

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On the interpretation of the words "other document" in s. 4(c) the learned appellate Judge following the reasoning of the Court of Appeal in *Brian Gordon Tweedie* [1984] 79 Cr. Appeal Reports 168, ruled that Exhibit P3 does not fall within the meaning of "other document" in s. 4(c) of our Act. In *Tweedie* the accused was instructed by his employers to sell silver and palladium before the close of trading on a particular day because it was thought that the market would start falling. The accused failed to comply with the instruction but made three false entries in the trading sheet of the company purporting to show the sale of silver and palladium. He then handed the trading sheet to a member of the firm's accounting department. As a result his employers lost £170,000. The accused was convicted for corruption under the 1906 Act but was acquitted on appeal. In the Court of Appeal the words "or other document" (also appearing in the U.K. 1906 Act) were construed *ejusdem generis* and Lawton LJ said:

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A receipt is made out to someone who has paid a debt. An account is rendered by one person to another. The words “or other document” should, in our judgment, be construed as meaning a document which pass *inter partes*.

Indeed in *Tweedie* the document relied on by the prosecution was one to be used “for accounting purposes” only by the employers and never intended to be *inter partes* and had none of the characteristics of an *inter partes* document. We can therefore hardly argue against the decision in *Tweedie* based on the facts before the Court of Appeal. But a more pragmatic approach would appear to have been adopted in *Sage v. Eicholz* [1919] 2 KB 171, which was a case stated by a Metropolitan Police Magistrate to the King’s Bench Division. There the respondent was originally charged under the U.K. Prevention of Corruption Act 1906. The facts of that case are as follows. It was the practice of the Metropolitan Water Board to allow to the owners of houses a deduction from the water rates in respect of such portions of their property which had been empty during the quarter for which the rates were payable. The respondent who was the owner of a block of chambers, handed to an agent of the Board his claims for “empties” in which he fraudulently represented that portions of the block had been empty for longer period than was in fact the case, thereby obtaining a larger allowance than he was entitled to. The provision of the 1906 Act under which the respondent was charged read as follows:

If any person knowingly gives to any agent ... any ... document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal, he shall be guilty of an offence.

Bray J said at p. 176:

In my view the words of the Act are perfectly clear and unambiguous. The word “knowingly” is deliberately used in the third paragraph instead of the word “corruptly”, and “knowingly” does not necessarily involve any element of corruption. The substitution of the word “knowingly” was probably made because of the great difficulty of proving corruption, and it was thought advisable in a case of the kind dealt with in that paragraph to make the act an offence whether it was done corruptly or not.

Lawrence J said at p. 177:

The word “corruptly” is used in the first and second branches, and, as my Lord has pointed out, is deliberately omitted from the third. That omission is to my mind readily explained by the fact that it is frequently found impossible to prove that an agent has been corrupted; and in view of that difficulty it was thought sufficient, in order to establish an offence on the part of the giver, to prove that he knowingly gave to an agent a document which contained a statement that was false, erroneous, or defective, intending it to mislead the principal, to prove that the agent, knowing that the document was false, used it with intent to deceive his principal.

The same pragmatic approach was adopted by our Federal Court in *Nadimuthu v. PP* [1974] 1 MLJ 20, which was also a reference on the question whether a medical certificate used in the circumstances of that case was a “document” within the meaning of s. 4(c) of the Prevention of Corruption Act 1961. The appellant there was also an employee of the Keretapi Tanah Melayu and charged with knowingly using with intent to deceive his principal a sick certificate which contained statements false in material particulars which to his knowledge were intended to deceive his principal. The appellant was paid wages for the two days he was supposedly unfit for duty on the strength of those medical certificates. It was held by the Federal Court that the medical certificates were clearly used to claim monetary benefits to which the applicant was not entitled and therefore the medical certificates were “documents” within the meaning of s. 4(c) of the Prevention of Corruption Act 1961.

a In the instant case the facts clearly showed that the time sheet (Exhibit P3) was clearly used as basis for the respondent's claim to monetary benefits to which he was not entitled. It cannot be correct to say that Exhibit P3 is meant only for internal use of the department. On the facts Exhibit P3 is clearly distinguishable from the returns made in *Tweedie*.

We accordingly answered the question in the affirmative and made no other orders.

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Also found at [1988] 1 CLJ 152

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